

Program Director becomes aware of events that lead him or her to believe that a deferral agency no longer meets the requirements for deferral or designation, the Director should notify the agency and request a response. Based on the response or after a hearing, the Program Director is authorized to render a final determination regarding continuation of the agency as a FEP agency. The Commission has determined that these decisions are better made by the full Commission. At its meeting on May 22, 1995, the Commission rescinded the delegation of authority to the Director of the Office of Program Operations to make determinations affecting the designation of a State or local fair employment practices agency as a FEP agency. As a result of this action, the Commission is substituting "Commission" or "Chairman of the Commission" for "Program Director, Office of Program Operations" in 1601.71 and making conforming grammatical adjustments.

This rule is not a significant regulatory action for the purposes of Executive Order 12866. Under the Regulatory Flexibility Act, this rule will not have a significant economic effect on a substantial number of small entities.

#### List of Subjects in 29 CFR Part 1601

Administrative practice and procedure, Equal employment opportunity, Individuals with disabilities.

For the Commission,  
**Gilbert F. Casellas,**  
*Chairman.*

For the reasons set forth in the preamble, EEOC is amending 29 CFR part 1601 as follows:

#### PART 1601—[AMENDED]

1. The authority citation for part 1601 continues to read as follows:

**Authority:** 42 U.S.C. 2000e to 2000e-17; 42 U.S.C. 12111 to 12117.

#### § 1601.70 [Amended]

2. Paragraph (b) of section 1601.70 is amended by substituting the words "Chairman of the Commission" for the words "Program Director, Office of Program Operations" in the first sentence.

3. Paragraph (e) of section 1601.70 is amended by substituting the words "Chairman or his or her designee" for the words "Program Director, Office of Program Operations," in the first sentence.

4. Paragraph (a) of section 1601.71 is amended by:

(a) substituting the word "Commission" for the words "Program Director, Office of Program Operations,"; and

(b) substituting the words "the Commission" for the words "he or she".

5. Paragraph (b) of section 1601.71 is amended by substituting the word "Commission" for the words "Program Director, Office of Program Operations," in both places where it is found in the first sentence.

6. Paragraph (c) of section 1601.71 is amended by:

(a) substituting the word "Chairman" for the words "Program Director, Office of Program Operations," in the first sentence;

(b) substituting the words "the Chairman" for the words "such Director" in the first sentence;

(c) substituting the word "Chairman" for the word "Director" in the second sentence; and

(d) substituting the word "Commission" for the word "Director" in the third sentence.

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[CA 95-7-6789a; FRL-5280-1]

#### Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; South Coast Air Quality Management District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the California State Implementation Plan (SIP). The revisions concern rules from the South Coast Air Quality Management District (SCAQMD) which control oxides of nitrogen (NO<sub>x</sub>) from industrial, commercial, and institutional boilers, steam generators, and process heaters. This approval action will incorporate these rules into the Federally approved SIP. The intended effect of approving these rules is to regulate emissions of NO<sub>x</sub> in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality

standards and plan requirements for nonattainment areas.

**DATES:** This final rule is effective on November 6, 1995 unless adverse or critical comments are received by October 6, 1995. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

**ADDRESSES:** Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765-4182.

**FOR FURTHER INFORMATION CONTACT:** Mae Wang, Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, Telephone: (415) 744-1200.

#### SUPPLEMENTARY INFORMATION:

##### Applicability

The rules being approved into the California SIP include: SCAQMD Rule 1146, Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters; and Rule 1146.1, Emissions of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters. These rules were submitted by the California Air Resources Board (CARB) to EPA on July 13, 1994.

##### Background

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA or the Act) were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. The air quality planning requirements for the reduction of NO<sub>x</sub> emissions through reasonably available control technology (RACT) are set out in section 182(f) of the CAA. On November 25, 1992, EPA published a Notice of Proposed Rulemaking (NPRM) entitled "State Implementation Plans; Nitrogen Oxides Supplement to the General

Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO<sub>x</sub> Supplement) which describes and provides preliminary guidance on the requirements of section 182(f). 57 FR 55620. The NO<sub>x</sub> Supplement should be referred to for further information on the NO<sub>x</sub> requirements and is incorporated into this notice of direct final rulemaking by reference.

Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO<sub>x</sub> ("major" as defined in section 302 and section 182 (c), (d), and (e)) as are applied to major stationary sources of volatile organic compound (VOC) emissions, in moderate or above ozone nonattainment areas. The Los Angeles-South Coast Air Basin Area is classified as extreme;<sup>1</sup> therefore this area was subject to section 182(f), the RACT requirements of section 182(b)(2), and the November 15, 1992 deadline, cited below.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC (and NO<sub>x</sub>) emissions (not covered by either a pre-enactment or post-enactment control technologies guideline (CTG) document) by November 15, 1992. There were no NO<sub>x</sub> CTGs issued before enactment and EPA has not issued a CTG document for any NO<sub>x</sub> sources since enactment of the CAA. The RACT rules covering NO<sub>x</sub> sources and submitted as SIP revisions, are expected to require final installation of the actual NO<sub>x</sub> controls as expeditiously as practicable, but no later than May 31, 1995.

SCAQMD Rule 1146 and Rule 1146.1 were adopted by SCAQMD on May 13, 1994, and were submitted by CARB to EPA on July 13, 1994. These submitted rules were found to be complete on July 22, 1994 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V.<sup>2</sup> By today's notice, EPA is taking direct final action to approve these rules into the Federally approved SIP.

SCAQMD Rule 1146 and 1146.1 control emissions of NO<sub>x</sub> from industrial, commercial, and institutional boilers, steam generators and process heaters. NO<sub>x</sub> emissions contribute to the production of ground level ozone and smog. The rules were adopted as part of

SCAQMD's efforts to achieve the National Ambient Air Quality Standards for ozone and in response to the CAA requirements cited above. The following section contains EPA's evaluation and final action for these rules.

#### EPA Evaluation

In determining the approvability of a NO<sub>x</sub> rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for this action, appears in various EPA policy guidance documents.<sup>3</sup> Among these provisions is the requirement that a NO<sub>x</sub> rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO<sub>x</sub> emissions.

For the purposes of assisting state and local agencies in developing NO<sub>x</sub> RACT rules, EPA prepared the NO<sub>x</sub> Supplement to the General Preamble. In the NO<sub>x</sub> Supplement, EPA provides guidance on how RACT will be determined for stationary sources of NO<sub>x</sub> emissions. While most of the guidance issued by EPA on what constitutes RACT for stationary sources has been directed towards application for VOC sources, much of the guidance is also applicable to RACT for stationary sources of NO<sub>x</sub> (see section 4.5 of the NO<sub>x</sub> Supplement). In addition, pursuant to section 183(c), EPA is issuing alternative control technique documents (ACTs), which identify alternative controls for all categories of stationary sources of NO<sub>x</sub>. The ACT documents will provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or more of NO<sub>x</sub>. However, the ACTs will not establish a presumptive norm for what is considered RACT for stationary sources of NO<sub>x</sub>. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted NO<sub>x</sub> RACT rules meet Federal RACT requirements and are fully enforceable and strengthen or maintain the SIP.

SCAQMD Rule 1146, Emissions of Oxides of Nitrogen from Industrial,

Institutional, and Commercial Boilers, Steam Generators, and Process Heaters, contains the following significant changes from the current SIP rule:

1. Expands applicability beyond steam generators with rated heat input capacity (RHIC) of 50 MBtu/hr or more.
  2. Lowers emission limits.
  3. Adds definitions, control plan requirements, recordkeeping, compliance determination provisions, a compliance schedule, and an equipment tuning procedure.
- SCAQMD Rule 1146.1, Emissions of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters, is a new rule which controls emissions from units between 2 and 5 million Btu per hour. The major provisions of this rule include: emission limits, recordkeeping, compliance determination provisions, a compliance schedule, and an equipment tuning procedure.

For the source category of industrial, commercial, and institutional boilers, steam generators, and process heaters, CARB has made a determination on the emission levels that constitute RACT, and CARB has published a guidance document concerning their determination for this source category. EPA believes that the emission limits in Rule 1146 and Rule 1146.1 are consistent with guidance and policy for making RACT determinations, and that these limits satisfy the RACT requirement. A more detailed discussion of the sources controlled,<sup>4</sup> the controls required, and the justification for why these controls represent RACT can be found in the Technical Support Document (TSD) for each rule, available from the U.S. EPA Region IX office.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations and EPA policy. Therefore, SCAQMD Rule 1146 and Rule 1146.1 are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a), section 182(b)(2), section 182(f) and the NO<sub>x</sub> Supplement to the General Preamble.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to

<sup>1</sup> The Los Angeles-South Coast Air Basin Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

<sup>2</sup> EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

<sup>3</sup> Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register Notice**" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988).

<sup>4</sup> Rule 1146 and Rule 1146.1 will apply to sources which are not covered in the SCAQMD NO<sub>x</sub> RECLAIM program.

relevant statutory and regulatory requirements.

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document elsewhere in this **Federal Register**, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 6, 1995, unless, by October 6, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective November 6, 1995.

## Regulatory Process

### Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector or to state, local, or tribal governments in the aggregate.

Through submission of this state implementation plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under part D of the Clean Air Act. These rules may bind state, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements because affected sources are already subject to these regulations under state law. Therefore, no additional costs to state, local, or tribal governments or to the private sector result from this action. EPA has also determined that this direct final action does not include a mandate that may result in estimated costs of \$100 million or more to state, local, or tribal governments in the aggregate or to the private sector.

### Small Businesses

Under the Regulatory Flexibility Act, 5 U.S.C. Section 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on affected small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S. Ct. 1976); 42 U.S.C. section 7410(a)(2).

The Office of Management and Budget has exempted this regulatory action from review under Executive Order 12866.

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Dated: August 8, 1995.

**Felicia Marcus**,  
Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

### PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401-7671q.

### Subpart F—California

2. Section 52.220 is amended by adding paragraph (c) (198)(i)(H)(I) to read as follows:

#### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*  
(198) \* \* \*  
(i) \* \* \*

(H) South Coast Air Quality Management District.

(I) Rule 1146 and Rule 1146.1, adopted May 13, 1994.

\* \* \* \* \*

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### 40 CFR Part 52

[SD6-1-6947a and SD5-1-6191a; FRL-5279-3]

### Clean Air Act Approval and Promulgation of State Implementation Plan for South Dakota; Revisions to the Air Pollution Control Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA approves the State implementation plan (SIP) revisions submitted by the State of South Dakota on November 12, 1993 and March 7, 1995. EPA is replacing the existing rules approved in the SIP with the following chapters of the Administrative Rules of South Dakota (ARSD), as requested by the State: 74:36:01-74:36:04, 74:36:06; 74:36:07, 74:36:10-74:36:13, and 74:36:15, as in effect on January 5, 1995. The State's submittals included revisions to the State's definitions, minor source construction and federally enforceable state operating permit (FESOP) rules, source category emission limitations, sulfur dioxide (SO<sub>2</sub>) rules, new source performance standards (NSPS), new source review (NSR) requirements for new and modified major sources impacting nonattainment areas, and enhanced monitoring and compliance certification requirements.

In addition, EPA is approving the State's construction and operating permit program under section 112(l) of the Clean Air Act (Act) for the purposes of creating federally enforceable permit conditions for sources of hazardous air pollutants (HAPs).

**DATES:** This final rule is effective on November 6, 1995 unless adverse comments are received by October 6, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations: Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500,